



D57391163

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

EXHIBIT

1

STATE OF OHIO
Plaintiff-Appellee

-vs-

LOUIS MERRIWEATHER

C030948

C.A.No.

Trial Court No.B-9702196

STATE OF OHIO, COUNTY OF HAMILTON, SS:

NOTICE OF REQUEST FOR LEAVE TO FILE
DELAYED APPEAL UNDER APP.R.5(a)

Now comes Appellate-defendant, Louis Merriweather, in pro se, an unlettered Appellant, and formally give notice for request for leave to file a delayed appeal under App.R. 5(a), from ruling or judgment entered in the above case from the Hamilton county common pleas court on Sept.29,2003, without strictly complying with Ohio's Civil Rules of Procedure 5(a) and 58(B), "notice of service and or Post-card service" of ruling or judgment entered in the present case, denying Appellant the right to

a timely direct appeal.

ORIG. COMP. FILING: _____
() CERT MAIL () SHERIFF () WAVE

() PROCESS SERVER () NONE

CLERKS FEES _____ TIC

SECURITY FOR COST _____

DEPOSITED BY 29997

FILING CODE A-117

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this notice was forward by U.S.mail to Mr. Michael K.Allen, 230 E.9th St., Cincinnati, Ohio 45202, on this 17th day of Jan 2003.

Respectfully Submitted

Louis Merriweather #344451
P.O.Box 5500
Chillicothe, Ohio 45601-0990

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY, OHIO

2003 DEC 26 P 3:58

FILED

Louis Merriweather
Louis Merriweather

FILED
COURT OF APPEALS

DEC 26 2003

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

-4-

MEMORANDUM IN SUPPORT

Now comes Appellant-defendant, Louis Merriweather, in pro se, and respectfully moves this honorable court for leave to file a delayed appeal under App. Rule 5(a), on a ruling/judgment that was issued on Sept. 29, 2003, in the Hamilton county common pleas court in the above case no. B-9702196, the reason for this request is that trial court and the Hamilton county clerk of courts failed to timely provide Appellant with "notice of service" on trial court's denial of petition filed under O.R.C. § 2953.21, on a serious question of "subject matter jurisdiction", which was raised on first time under "new and discovered evidence". This petition was filed with Hamilton county clerk of courts on Sept. 9, 2003.

FACTS OF CASE NO. B-9702196

In March 1997, appellant was arrested without a warrant and without being properly orally informing Appellant of what he was being arrested for, during trial court proceeding "without", (1) per-trial discover; (2) without a proper complaint; appellant was induced by trial counsel to plea guilty too 4 counts of rape without force or threat of force, in violaion of O.R.C. § 2907.02(A)(1), in "absence" of a complaint and affidavit properly filed as provided by O.R.C. § 2935.05 and Rule 4(E)(2) of the Ohio Rules of Criminal Procedure.

SECTION § 2935.05; states in part;

When a person named in section § 2935.05 of the Revised Code has arrested a person without a warrant the arresting officer shall without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and shall file or cause to file an affidavit describing the offense for which the person was arrested.

RULE 4 (E)(2); PROVIDES IN PERTINENT PART;

(2) Arrest without warrant:

"Where a person is arrested without a warrant the arresting officer shall,bring the arrested person without unnecessary delay befor a court having jurisdiction of the offense,and shall file or cause to be filed a complaint describing the offense for which the person was arrested.

Thus,under Ohio law the"complaints and affidavits"in the present case were"**not**"arrest warrants but were"charging instruments".As such,in absence of a complaint and affidavit,did"**not**"strictly complie with the requirements of Rule 3 of the Ohio Rules of Criminal Procedure,which states;

"The complaint is a written statement of the essential facts constituting the offense charged.It shall also state the numerical designation of the applicable statute or ordinance.It shall be made upon oath before any person authorized by law to administer oaths.(**Emphasis added**)."[The] purpose and function of a complaint is to inform the accused of the crime of which he is charged.It forms the essential basis of the court's jurisdiction and the subsequent trial and judgment",City of Cleveland v.Weaver,10 Misc(2d) 15,461 N.E.2d.32(Muni,Cleveland 1983);City of New Albany v.Dalton,104 App.(3d),307,661 N.E.2d.1132(Franklin 1995);State v.Villagomez,44 App.(2d)209,211,337 N.E.2d.167.[The] properly filed complaint gives"Municipal Court"in Ohio jurisdiction in a criminal case,without a proper complaint as in the present case,municipal court lacked jurisdiction.

"[M]unicipal court did not acquire competent jurisdiction in criminal case when complaint and affidavit were not properly signed by complainant,"in absence of sufficient formal accusation,a court acquires"**no**"jurisdiction,and if it assumes jurisdiction,a trial,conviction are nullity.State v.Miller,547 N.E.2d.399 (Hamilton County 1988):In State v.Craig,(Mar.12,1986),Hamilton App.No.C-850444,unreported,1986 WL 3096,holding"The complaint is the jurisdictional instrument of the municipal court".

"The filing of a proper affidavit is pre-requisite to acquisition of jurisdiction by municipal court, and writing which purports to be affidavit is without any validity unless properly sworn to before some person possessing authority to administer oaths. *South Euclid v. Samartini*, (M.C.1965), 5 Ohio Misc.38,31 O.O.2d.87,204 N.E.2d.425. Failure to have affidavit verified is jurisdictional, and such defect cannot be waived.

The Ohio Constitution guarantees to every defendant the right to know the "nature and cause of the accusation against him", section 10, article 1, of the Ohio Constitution. The primary purpose of a charging instrument in a criminal prosecution is to inform the defendant of the nature of the offense with which he is charged. *State v. Lindway*, (1936), 131 Ohio St.166, 2 N.E.2d.490, cert.den.299 U.S.506, 57 S.Ct.36, 81 L.Ed.375; *Holt v. State*, (1923), 107 Ohio St.307, 140 N.E.2d.349; *State v. Villagomez*, (1974), 44 Ohio App.209, 337 N.E.2d.167; *City of Toledo v. Kohlhofer*, (1954), 96 OHIO App.355, 122 N.E.2d.20; See *Schroeder-Katz*, Ohio Criminal Law Vol.2, "Crim.R.3.. Author's text's p.126; "Since under the Rules of Criminal Procedure the "complaint" serves the same function as the affidavit did in pre-rule days, the same standard for judging the sufficiency of an affidavit must be applied, unless "some provision of the Rules of Criminal Procedure changes the rule that the complaint must state "all" the material elements of the crime charged. The state places great emphasis on the fact that Criminal Rule 3, states that the complaint should contain "essential" facts constituting the offense charged" and does not mention the term "elements of the crime" "Crim. Rule 3 means at a minimum that the list of essential facts contained in the complaint must state the essential elements of the crime charged. In the present case there appears after over 4 years of requests to be "no" complaint "sworn" or "unsworn" listing all the essential facts. In *New Albany v. Dalton*, 166 N.E2d.1132; The court ruled "an unsworn complaint [as in this case] is void, and any resulting conviction would be void. If a conviction under these conditions is too stand, it denies the defendant due process of law under the 14th amendment of the U.S. Constitution, and Article 1, Section 10, of the Ohio Constitution.

Failure to present properly sworn affidavit is defect that deprives court of subject matter jurisdiction and "cannot" be waived by defendant, Rules Crim. Proc. Rule 12.

ISSUE ONE

On the question of subject matter jurisdiction filed and stamped by the Hamilton county clerk of courts for the first time on Sept. 2, 2003, under §2953.21 [new and discovered evidence]. The appearance docket of case no. B-9702196 of 11/28/03 shows petition under §2953.21 was filed on 9/09/03 and denied on 9/29/03 without providing service to appellant. [Appearance docket of 11/28/03 is attached]. On 10/27/03 the appellant in writing requested a copy of appearance docket for case no. B-9702196, this written request was not stamped received till Nov. 4, 2003 at 10:58 a.m. [see attached request]. Appellant did not receive requested appearance docket though his institutional legal mail system till Dec. 3, 2003 [see attached envelope]. The trial court nor the Hamilton county clerk of court "strictly" complied with Ohio Criminal Rule 5(a), or Civil Rule 58(B) "Post-Card notice" service should have been provided to Appellant to assure timely appeal, without such notice/service, Appellant was deliberately denied the right to file a timely appeal of the trial court's denial of 9/29/03. Notice/service should have been provided Appellant timely; *Miamisburg Motel v. Huntington Natl. Bank*, 623 N.E.2d 172, (Ohio App. 2 Dist. 1993), without such notice/service Appellant was denied "due process of law" cause Appellant alleges that his arrest, trial, conviction and sentence were "unlawful" thus Appellant's continue imprisonment is "unlawful" for the following reasons; (1) Appellant was "not" properly informed of the charges against him, (2) Without a proper complaint and affidavit, municipal court and Hamilton county common pleas courts were without proper jurisdiction of the subject matter, and such conviction and imprisonment is in strict violation of the Ohio Constitution, Article 1, Section 10.

ISSUE TWO

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO
Plaintiff-Appellee

C030948

vs.

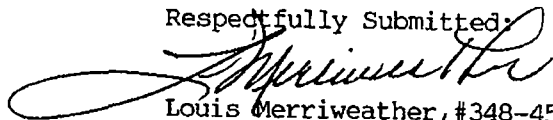
LOUIS MERRIWEATHER;
Defendant-Appellant;

CASE NO. B-9702196

NOTICE OF APPEAL

Notice is hereby given that Louis Merriweather, defendant-Appellant, hereby appeals to the court of Appeals of Hamilton County, Ohio, First Appellate District, from final judgment entered in this present action on the 29th day of Sept. 2003.

Respectfully Submitted:



Louis Merriweather, #348-451
P.O. box 5500
Chillicothe, Ohio 45601-0990

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing notice of appeal was forward to the Hamilton County Clerk of court at 1000 Main St. Cincinnati, Ohio 45202 on this 17th day of Dec. 2003



Louis Merriweather

FILED
COURT OF APPEALS

DEC 2 8 2003

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

STATE OF OHIO-PALINTIFF-APPELLE

LOUIS MERRIWEATHER-DEFENDANT-APPELLANT

FILED
COURT OF APPEALS

DEC 26 2003

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

TRIAL COURT NO.B-9 7 0 2 1 9 6

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO

TABLE OF CONTENTS AND ASSIGNMENTS OF ERRORS

NOTICE OF APPEAL COMMON PLEAS	PAGE-3
NOTICE FOR LEAVE TO FILE DELAYED APPEAL	-4
CERTIFICATE OF SERVICE	-4
MEMORANDUM IN SUPPORT	-5
FACTS	-5
O.R.C. §2953.21, AND §2935.05	-5
CRIMINAL RULE OF PROCEDURE 4(E)(2)	-5
CRIM.R.4(E)(2)	-6
CITY OF CLEVELAND V.WEAVER, 10 MISC.(2D)15,461 N.E.2D.32 (MUNI.CLEVELAND 1983)	-6
CITY OF NEW ALBANY V.DALTON, 104 App.(2D), 307,661 N.E.2D.1132 (FRANKLIN 1995)	-6
STATE V.VILLAGOMEZ, 44 App.(2D)209,211,337 N.E.2D.167	-6
STATE V.MILLER, 547 N.E.2D.399 HAMILTON COUNTY 1988)	-6
NO COMPLAINT OR IMPROPER COMPLAINT	-7
EUCLID V.SAMARTINI, (M.C.1965), 5 OHIO MISC.38,31 O.O.2D.87,204 N.E.2D.425	-7
OHIO CONSTITUTION	-7
STATE V.LINDWAY, (1936), 131 OHIO ST.166,2 N.E.2D.490, (CERT DEN.) 299 U.S.506,57, S.CT.36,81 L.ED.375	-7
HOLT V.STATE, (1923), 107 OHIO ST.307,140 N.E.2D.349	-7
STATE V.VILLAGOMEZ, (1974), 44 OHIO App.209,337 N.E.2D.167	-7
CITY OF TOLEDO V.KOHLHOFER, (1954), 96 OHIO App.355,122 N.E.2d.20	-7
SCHROEDER-KATZ, OHIO CRIMINAL LAW VOL.2.CRIM.R.3, AUTHOR'S TEXT'S P.126	-7
COMPLAINT SWORN AND UNSWORN	-7
NEW ALBANY V.DALTON, 166 N.E.2D.1132	-7
ASSIGNMENT OF ERROR ONE	-8
FAILURE TO PROVIDE SERVICE CIVIL R. 5(a) and 58(B)	-8
MIAMISBURG MOTEL V.HUNTINGTON NATL.BANK, 623 N.E.2D.172 (OHIO App.2 DISTRICT 1993)	-8
ASSIGNMENT OF ERROR TWO	-8
PRIOR JUDICIAL NOTICE OF FAILURE TO COMPLY WITH CIVIL R.5(a) & 58(B)	-9

//

	2 of 2
OHIO CRIM.RULES OF PRACTICE & PROCEDURE (2 ED.1989)29,SECTION 7.101	-9
OHIO JURISPRUDENCE 3D.(1981)491,CRIM.LAW,SECTION 729	-9
CITY OF CINCINNATI V.GARDNER,580 N.E.2D.545	-9
SUBJECT MATTER JURISDICTION	-10
FOX V.EATON CORP.(1976),48 OHIO ST.2D.236,238,2 O.O.3D.408,409,358 N.E.2D.536,537	-10
CONCLUSION	-11
LAW OF CASE DOCTRINE	-11
STATE EX.REL.SHARIF V.MCDONNELL,741 N.E.2D.127 OHIO	-11
CERTIFICATE OF SERVICE	-11
AFFIDAVIT	-12
AFFIDAVIT OF INDIGENCY	-13

EXHIBITS

A-REQUEST FOR APPEARANCE DOCKET

B-REQUEST ANSWERED BY HAMILTON COUNTY CLERK OF COURT'S

C-ENVELOPE POST MARKED DEC.1,2003

D-APPEARANCE DOCKET 11/28/03

E-APPEARANCE DOCKET.....8/14/03 WITH JUDICIAL NOTICE OF 5/15/03

///

2

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO

Plaintiff/Appellee

v.

Louis Merriweather

Defendant/Appellant

APPEAL NO. _____

TRIAL NO. B-9702196

AFFIDAVIT OF INDIGENCY

State of Ohio

County of Hamilton

} ss

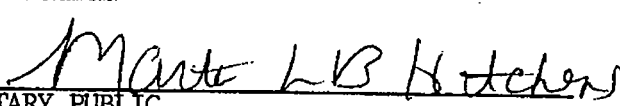
Louis Merriweather, the undersigned, being first duly sworn and cautioned,
deposes and states as follows:

1. That he is the Defendant in the above styled case;
2. That he is a citizen of the State of Ohio;
3. That he is indigent and unable to pay the costs and charges involved in the within matter;
4. That he is entitled to the redress that is sought in the above styled action to the best of his knowledge and belief.

FURTHER AFFIANT SAITH NAUGHT.


Louis Merriweather - Defendant/Appellant - Indigent

SWORN TO AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC IN AND FOR THE COUNTY AND
STATE THIS 9th DAY OF Dec., 2003


NOTARY PUBLIC

Maria L. B. Hitchens
Notary, State of Ohio
License No. 5239
Commission Expires 3/3/2004

- 14 -

Informal Complaint Resolution

Institution: *Ch. Williams*

Top section to be completed by inmate, within 14 days of incident.

Inmate will forward the White & Canary copies to the supervisor of the staff person or department most responsible for complaint. Forward Pink copy to the Inspector; and keep the Goldenrod copy.

Submitted To: <i>Hamilton County Common Pleas Clerk of Court</i>	Date Submitted: <i>10/27/03</i>
Inmate's Name: <i>Louis Merriweather</i>	Number: <i>348451</i>
	Housing Assignment: <i>B-3-113</i>

Complaint Regarding:

*The Hamilton County Common Pleas
Clerk of Court*

Ref. Docket Statement for Trial No. B-9702196

*① Please promptly forward to me a current
docket statement of my case No. B-9702196*

GREGORY HARTMAN
CLERK OF COURTS
HAMILTON COUNTY, OHIO

2003 NOV -4 A 10:58

FILED

Respectfully Submitted
Louis Merriweather

Lower Section to be completed by the supervisor of the staff person or department most responsible for complaint.
Return Canary copy to inmate within 7 calendar days. Send White copy to the Inspector.

Action Taken (Cite appropriate policy, procedure or regulation in response):

(A)

Staff Member's Signature and Title:	Date:
-------------------------------------	-------

Complaints not resolved may be addressed in accordance with 5120-9-31.



HAMILTON COUNTY CLERK OF COURTS

HAMILTON COUNTY COURTHOUSE

COMMON PLEAS RECORDS DESK

1000 MAIN STREET, ROOM 315

CINCINNATI, OHIO 45202

Person Requesting Records: Louis Merriweather Number: _____

Institution: _____ Date Request Received: _____

(1.) WE HAVE FILLED THE FOLLOWING RECORDS REQUEST:

Copy of Appearance Docket

(2.) YOUR RECORDS REQUEST HAS BEEN ANSWERED BY:

First Name of Deputy Clerk: Yvette Badge #: 0637

Telephone Number: (513) 946-5671 Fax Number: (513) 946-5670

Mailing Address: Hamilton County Courthouse
1000 Main Street, Room 315
Cincinnati, OH 45202

Date Request Answered: 12/1/2003 Answer Sent By: Yvette

(B)

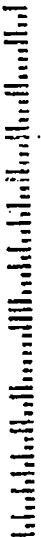
**MANY OF THE RECORDS YOU ARE REQUESTING MAY BE
AVAILABLE FREE-OF-CHARGE, 24 HOURS PER DAY ON
OUR WEBSITE
www.courtclerk.org**

GREGORY HARTMANN
CLERK OF COURTS
1000 MAIN ST - ROOM 315
CINCINNATI, OH 45202-1206

12/04/03

5 Encl
(Copies)

Mr. Davis Merrimack
#348451
P.O. Box 5500
Merrimack, NH
45601-0990



45601-0990 30

C

TODAY'S DATE: 11/28/2003

HAMILTON COUNTY CLERK OF COURTS

COMMON PLEAS DIVISION

PAGE 1

CASE: B 9702196

Criminal Appearance Report

CMSR5155

A P P E A R A N C E D O C K E T

Attorney - Plaintiff

Attorney - Defendant JACK C RUBENSTEIN

6200

Cur Judge - ROBERT S KRAFT

15

STATE OF OHIO vs. LOUIS MERRIWEATHER

Total Deposits \$.00

Total Costs \$0.00

STATE OF OHIO

vs.

LOUIS MERRIWEATHER

213 BOSNICK AV

CINTI

OH 45210

Municipal #: , , ,

Race: B Age: 49 Sex: M

Filed: 4/02/1997 0005 - WARRANT ON INDICTMENT

Count:1 Disposition:3DOC DEPARTMENT OF CORRECTIONS

Date: 6/18/1997

Count:2 Disposition:3DOC DEPARTMENT OF CORRECTIONS

Date: 6/18/1997

Count:3 Disposition:3DOC DEPARTMENT OF CORRECTIONS

Date: 6/18/1997

Count:4 Disposition:3DOC DEPARTMENT OF CORRECTIONS

Date: 6/18/1997

IMAGE	DATE	DESCRIPTION	AMOUNT
-------	------	-------------	--------

	4/02/1997	INDICTMENT REPORTED AND FILED. INDICTMENT FOR	
--	-----------	--	--

	4/02/1997	PRECIPE FOR WARRANT FILED AND WARRANT ISSUED.	
--	-----------	--	--

	4/03/1997	SIMON L. LEIS JR., SHERIFF: I HAVE IN CUSTODY AND HAVE SERVED COPY OF INDICTMENT ON	
--	-----------	---	--

230	4/10/1997	SAID DEFENDANT BY SNOWDEN, SR. DEPUTY ORDER TO SEAL ENTRY	
-----	-----------	--	--

110	4/11/1997	WAIVER OF PRESENCE OF DEFENDANT AT ARRAIGNMENT 100,000	
-----	-----------	--	--

	4/11/1997	COUNSEL ASSIGNED	
--	-----------	------------------	--

159	4/24/1997	DANIEL F BURKE JR ENTRY OF CONTINUANCE 5/7/97	
-----	-----------	---	--

40	4/25/1997	ORDER TO SEAL ENTRY	
	4/30/1997	WRITTEN REQUEST FOR BILL OF PARTICULARS.	

52	4/30/1997	DEFENDANT'S DEMAND FOR DISCOVERY.	
	5/07/1997	ENTRY OF CONTINUANCE 5/15/97	

	5/14/1997	SUBPOENA FOR WITNESS RETURNED AND ENDORSED	
--	-----------	---	--

	5/15/1997	ERICA PARRISH SUBPOENA FOR WITNESS ISSUED TO ERICA PARRISH	
--	-----------	--	--

124	5/15/1997	ENTRY WITHDRAWING PLEA OF NOT GUILTY AND ENTERING PLEA OF GUILTY CT 1 & 2 RAPE F-1 2907.02 DISMISS CT 3 & 4 & SEXUAL PREDATORS SPEC, CTS 3 & 4	
-----	-----------	---	--

130	5/15/1997	ENTRY ON WAIVER OF TRIAL BY JURY.	
241	5/15/1997	ENTRY ORDERING PROBATION INVESTIGATION AND REPORT.	

		CLINIC EVAL. REPORT ORDERED. REMANDED. SENT SET 6/18/97	
--	--	--	--

19	5/16/1997	ENTRY APPOINTING COMMUNITY DIAGNOSTIC AND TRFATMENT CENTER FOR EXAMINATION	
----	-----------	---	--

65	6/18/1997	ENTRY ADJUDICATING OFFENDER AS A: SEXUAL PREDATOR	
----	-----------	--	--

D-1

HAMILTON COUNTY CLERK OF COURTS

TODAY'S DATE: 11/28/2003

COMMON PLEAS DIVISION

PAGE 2

CASE: B 9702196

Criminal Appearance Report

CMSR5155

A P P E A R A N C E D O C K E T

66
225 6/18/1997 ENTRY ORDERING PROCESSING OF OFFENDER
6/18/1997 JUDGMENT ENTRY: INCARCERATION
DOC 10YRS ON EACH CTS 1 & 2 CONCURR.
TO EACH OTHER WITH CREDIT FROM 3/23/97
THRU 6/18/97. REMANDED. PAY COURT
COSTS. FOUND TO BE A SEXUAL PREDATOR

564 6/28/1997 ENTRY APPROVING COUNSEL FEES
\$300
5/06/1998 CRIMINAL STATE COSTS SATISFIED
12/06/2000 MOTION
FOR JUDICIAL RELEASE.

209 12/21/2000 ENTRY OVERRULING JUDICIAL RELEASE
2/14/2001 AFFIDAVIT OF INDIGENCY
2/14/2001 MOTION
FOR PRODUCTION OF TRANSCRIPTS BY
INDIGENT DEFENDANT.
3/08/2001 MOTION
FOR APPOINTMENT OF COUNSEL.
3/08/2001 AFFIDAVIT OF INDIGENCY
3/29/2001 NOTICE OF APPEAL FILED
NO. C0100232 COPY SENT TO HAMILTON
COUNTY PROSECUTOR
3/29/2001 DOCKET STATEMENT FILED.
B9702196
4/10/2001 MOTION TO DISMISS
REQUEST FOR TRANSCRIPTS

135 4/26/2001 ENTRY GRANTING MOTION
TO DISMISS REQUEST FOR TRANSCRIPTS
5/04/2001 ENTRY OF DISMISSAL
05/04/01 IMAGE# 3
C0100232
**COPY SENT TO DOC AND DEFENDANT ON
05/21/01 RSR**
6/14/2001 DOCKET STATEMENT FILED.
C-010232
9/28/2001 NOTICE OF APPEAL FILED AND MOTION FOR
DELAYED APPEAL
NO. C0100638 COPY SENT TO HAMILTON
COUNTY PROSECUTOR
9/28/2001 DOCKET STATEMENT FILED.
10/01/2001 DOCKET STATEMENT FILED.
C01000638
10/02/2001 DOCKET STATEMENT FILED.
C-010638
11/02/2001 ENTRY OVERRULING MOTION FOR LEAVE TO
APPEAL
C0100638
11/02/01 IMAGE# 4
***COPY SENT TO DOC AND DEFENDANT ON
11/19/01 RSR***
12/18/2001 NOTICE OF APPEAL OF APPELLANT L.
MERRIWEATHER FILED IN THE SUPREME
COURT OF OHIO ON 12/12/01, SC# 01-2152

252 2/19/2002 MOTION
FOR JAIL TIME CREDIT PURSUANT TO
O.R.C. #2967.191
3/04/2002 ENTRY GRANTING MOTION FOR JAIL TIME
CREDIT
3/19/2002 COPY OF ENTRY DENYING LEAVE TO APPEAL
AND DISMISSING APPEAL, FILED IN THE
SUPREME COURT OF OHIO ON 03/04/02, SC
01-2152-
7/29/2002 MOTION
TO SUSPEND INCARCERATION/JUDICIAL
RELEASE O.R.C. 2929.20
8/23/2002 MOTION
TO STAY FURTHER PROCEEDING OF #2929.20.
8/27/2002 MOTION
FOR DECLARATORY RELIEF OF SENTENCING.

D-2

TODAY'S DATE: 11/28/2003
CASE: B 9702196

HAMILTON COUNTY CLERK OF COURTS
COMMON PLEAS DIVISION
Criminal Appearance Report

PAGE 3
CMSR5155

A P P E A R A N C E D O C K E T

10/08/2002 MOTION
TO STRIKE FROM RECORDS
11/22/2002 MOTION
FOR RECUSAL OF SENTENCING JUDGE
12/20/2002 MERRIWEATHER'S MOTION FOR
POST-SENTENCE WITHDRAWAL OF GUILTY
PLEAS.
1/10/2003 FILING
1/17/2003 MOTION
TO AMEND POST-SENTENCE WITHDRAWAL OF
GUILTY PLEAS.
284 2/13/2003 ENTRY
DENYING MOTION FOR POST SENTENCE
WITHDRAWAL OF GUILTY PLEA
285 2/13/2003 ENTRY
DENYING MOTION FOR RECUSAL OF
SENTENCING JUDGE
3/04/2003 MOTION
TO SUSPEND FURTHER INCARCERATION UNDER
JUDICIAL RELEASE O.R.C. #2929.20
354 3/06/2003 ENTRY OVERRULING
MOTION FOR JUDICIAL RELEASE
4/09/2003 MOTION
FOR EMERGENCY DECLARATORY JUDGMENT.
4/09/2003 MOTION
FOR EVIDENTIARY HEARING TO CORRECT
MANIFEST INJUSTICE UNDER CRIM. R. 32.1
234 4/11/2003 ENTRY DENYING:
MOTIONS
5/15/2003 JUDICIAL NOTICE.
9/09/2003 MOTION
FOR EVIDENTIARY HEARING PURSUANT TO
R.C. #2953.22
459 9/29/2003 ENTRY DENYING:
MOTION

D-3

TODAY'S DATE: 8/14/2003
CASE:B 9702196

HAMILTON COUNTY CLERK OF COURTS
COMMON PLEAS DIVISION
Criminal Appearance Report

PAGE 1
CMSR5155

A P P E A R A N C E D O C K E T

Attorney - Plaintiff
Attorney - Defendant JACK C RUBENSTEIN 6200
Cur Judge - ROBERT S KRAFT 15

STATE OF OHIO vs. LOUIS MERRIWEATHER

Total Deposits \$.00
Total Costs \$0.00

STATE OF OHIO

vs.

LOUIS MERRIWEATHER

13 BOSNICK AV

INTI

Municipal #: , , ,

OH 45210

ace: B Age: 49 Sex: M

Filed: 4/02/1997 0005 - WARRANT ON INDICTMENT

Count:1	Disposition:3DOC DEPARTMENT OF CORRECTIONS	Date: 6/18/1997
Count:2	Disposition:3DOC DEPARTMENT OF CORRECTIONS	Date: 6/18/1997
Count:3	Disposition:3DOC DEPARTMENT OF CORRECTIONS	Date: 6/18/1997
Count:4	Disposition:3DOC DEPARTMENT OF CORRECTIONS	Date: 6/18/1997

IMAGE	DATE	DESCRIPTION	AMOUNT
-------	------	-------------	--------

4/02/1997 INDICTMENT REPORTED AND FILED.
INDICTMENT FOR

4/02/1997 RAPE 2907.02A1b R.C. W/ SPEC. (4CNTS)
PRECIPICE FOR WARRANT FILED AND WARRANT
ISSUED.

4/03/1997 SIMON L. LEIS JR., SHERIFF: I HAVE IN
CUSTODY AND HAVE SERVED COPY OF
INDICTMENT ON

SAID DEFENDANT BY SNOWDEN, SR. DEPUTY

4/10/1997 ORDER TO SEAL ENTRY

4/11/1997 WAIVER OF PRESENCE OF DEFENDANT AT
ARRAIGNMENT
100,000

4/11/1997 COUNSEL ASSIGNED
DANIEL F BURKE JR

4/24/1997 ENTRY OF CONTINUANCE
5/7/97

4/25/1997 ORDER TO SEAL ENTRY

4/30/1997 WRITTEN REQUEST FOR BILL OF
PARTICULARS.

4/30/1997 DEFENDANT'S DEMAND FOR DISCOVERY

5/07/1997 ENTRY OF CONTINUANCE
5/15/97

5/14/1997 SUBPOENA FOR WITNESS RETURNED AND
ENDORSED

ERICA PARRISH

5/15/1997 SUBPOENA FOR WITNESS ISSUED TO
ERICA PARRISH

5/15/1997 ENTRY WITHDRAWING PLEA OF NOT GUILTY
AND ENTERING PLEA OF GUILTY
CT.1 & 2 RAPE F-1 2907.02 DISMISS CT 3
& 4 & SEXUAL PREDATORS SPEC CTS 3 & 4

5/15/1997 ENTRY ON WAIVER OF TRIAL BY JURY.

5/15/1997 ENTRY ORDERING PROBATION INVESTIGATION
AND REPORT.

CLINIC EVAL.REPORT ORDERED. REMANDEL.
SENT SET 6/18/97

5/16/1997 ENTRY APPOINTING COMMUNITY DIAGNOSTIC
AND TREATMENT CENTER FOR EXAMINATION

6/18/1997 ENTRY ADJUDICATING OFFENDER AS A:
SEXUAL PREDATOR

6/18/1997 ENTRY ORDERING PROCESSING OF OFFENDER

E-1

TODAY'S DATE: 8/14/2003
CASE: B 9702196

HAMILTON COUNTY CLERK OF COURTS
COMMON PLEAS DIVISION
Criminal Appearance Report

PAGE 2
CMSR5155

A P P E A R A N C E D O C K E T

225 6/18/1997 JUDGMENT ENTRY: INCARCERATION
DOC 10YRS ON EACH CTS 1 & 2 CONCURR.
TO EACH OTHER WITH CREDIT FROM 3/23/97
THRU 6/18/97. REMANDED. PAY COURT
COSTS. FOUND TO BE A SEXUAL PREDATOR

564 6/28/1997 ENTRY APPROVING COUNSEL FEES
\$300
5/06/1998 CRIMINAL STATE COSTS SATISFIED
12/06/2000 MOTION
FOR JUDICIAL RELEASE.

209 12/21/2000 ENTRY OVERRULING JUDICIAL RELEASE
2/14/2001 AFFIDAVIT OF INDIGENCY
2/14/2001 MOTION
FOR PRODUCTION OF TRANSCRIPTS BY
INDIGENT DEFENDANT.
3/08/2001 MOTION
FOR APPOINTMENT OF COUNSEL.
3/08/2001 AFFIDAVIT OF INDIGENCY
3/29/2001 NOTICE OF APPEAL FILED
NO. C0100232 COPY SENT TO HAMILTON
COUNTY PROSECUTOR
3/29/2001 DOCKET STATEMENT FILED.
B9702196
4/10/2001 MOTION TO DISMISS
REQUEST FOR TRANSCRIPTS

135 4/26/2001 ENTRY GRANTING MOTION
TO DISMISS REQUEST FOR TRANSCRIPTS
5/04/2001 ENTRY OF DISMISSAL
05/04/01 IMAGE# 3
C0100232
**COPY SENT TO DOC AND DEFENDANT ON
05/21/01 RSR**
6/14/2001 DOCKET STATEMENT FILED.
C-010232
9/28/2001 NOTICE OF APPEAL FILED AND MOTION FOR
DELAYED APPEAL
NO.C0100638 COPY SENT TO HAMILTON
COUNTY PROSECUTOR
9/28/2001 DOCKET STATEMENT FILED.
10/01/2001 DOCKET STATEMENT FILED.
C01000638
10/02/2001 DOCKET STATEMENT FILED.
C-010638
11/02/2001 ENTRY OVERRULING MOTION FOR LEAVE TO
APPEAL
C0100638
11/02/01 IMAGE# 4
***COPY SENT TO DOC AND DEFENDANT ON
11/19/01 RSR***

12/18/2001 NOTICE OF APPEAL OF APPELLANT L.
MERRIWEATHER FILED IN THE SUPREME
COURT OF OHIO ON 12/12/01, SC# 01-2152

2/19/2002 MOTION
FOR JAIL TIME CREDIT PURSUANT TO
O.R.C. #2967.191

3/04/2002 ENTRY GRANTING MOTION FOR JAIL TIME
CREDIT

3/19/2002 COPY OF ENTRY DENYING LEAVE TO APPEAL
AND DISMISSING APPEAL, FILED IN THE
SUPREME COURT OF OHIO ON 03/04/02, SC
01-2152

7/29/2002 MOTION
TO SUSPEND INCARCERATION/JUDICIAL
RELEASE O.R.C. 2929.20

8/23/2002 MOTION
TO STAY FURTHER PROCEEDING OF #2929.20

8/27/2002 MOTION
FOR DECLARATORY RELIEF OF SENTENCING.

10/08/2002 MOTION
TO STRIKE FROM RECORDS

E-2

TODAY'S DATE: 8/14/2003
CASE: B 9702196

HAMILTON COUNTY CLERK OF COURTS
COMMON PLEAS DIVISION
Criminal Appearance Report

PAGE 3
CMSR5155

A P P E A R A N C E D O C K E T

11/22/2002 MOTION
FOR RECUSAL OF SENTENCING JUDGE
12/20/2002 MERRIWEATHER'S MOTION FOR
POST-SENTENCE WITHDRAWAL OF GUILTY,
PLEAS.
1/10/2003 FILING
1/17/2003 MOTION
TO AMEND POST-SENTENCE WITHDRAWAL OF
GUILTY PLEAS.
284 2/13/2003 ENTRY
DENYING MOTION FOR POST SENTENCE
WITHDRAWAL OF GUILTY PLEA
285 2/13/2003 ENTRY
DENYING MOTION FOR RECUSAL OF
SENTENCING JUDGE
3/04/2003 MOTION
TO SUSPEND FURTHER INCARCERATION UNDER
JUDICIAL RELEASE O.R.C. #2929.20
35 3/06/2003 ENTRY OVERRULING
MOTION FOR JUDICIAL RELEASE
4/09/2003 MOTION
FOR EMERGENCY DECLARATORY JUDGMENT.
4/09/2003 MOTION
FOR EVIDENTIARY HEARING TO CORRECT
MANIFEST INJUSTICE UNDER CRIM. R. 32.1
334 4/11/2003 ENTRY DENYING:
MOTIONS
5/15/2003 JUDICIAL NOTICE.

E-3

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



STATE OF OHIO

APPEAL NO. C-030948
TRIAL NO. B-9702196

Appellee,

Vs

ENTRY GRANTING LEAVE TO
APPEAL AND EXTENDING TIME

LOUIS MERRIWEATHER

Appellant,

This cause came on to be considered upon the PRO SE motions of the appellant filed herein for leave to appeal and for the appointment of counsel, and

The Court, upon consideration thereof, finds that the motion for leave to appeal is well taken and is granted; however, the motion for the appointment of counsel is not well taken and is overruled.

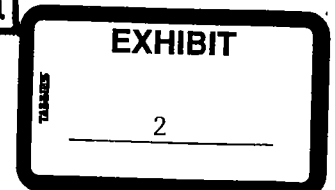
Wherefore, upon consideration thereof, the appellant shall have until February 27, 2004 to file the docket statement.

To The Clerk:

Enter upon the Journal of the Court on 2/6/04 per order of the Court.

By: Rayon W. Winkler
Presiding Judge

(Copies sent to all counsel)



COURT OF APPEALS

Judges:
Rupert A. Doan
Lee H. Hildebrandt, Jr.
Robert H. Gorman
Mark Philip Painter
J. Howard Sundermann, Jr.
Ralph Winkler

FIRST APPELLATE DISTRICT OF OHIO
William Howard Taft Law Center
12th Floor, 230 East Ninth Street
Cincinnati, Ohio 45202-2138

Thomas J. Rottinghaus
Court Administrator

Mark E. Combs
Assistant Administrator

(513) 946-3500
Fax: (513) 946-3411

STATE OF OHIO,

:

APPEAL NO. C-030948

Plaintiff-Appellee,

:

TRIAL NO. B-9702196

VS.

:

LOUIS MERRIWEATHER,

:

Defendant-Appellant.

:

ACCELERATED CALENDAR SCHEDULING ORDER

Having reviewed the notice of appeal and docket statement filed herein, and pursuant to Local Rule 12(2), it is the Order of this Court that this cause be placed on the Court's accelerated calendar.

It is Ordered that the complete record of this action be filed on or before 06/09/2004.
(See paragraphs one and two of the enclosed.)


The appellant's brief shall be filed on or before 07/09/2004.
The appellee's brief shall be filed on or before 08/10/2004.
(See paragraph four of the enclosed.)

Counsel who wish to submit the appeal to the Court without oral argument should submit a written request to the court at least three working days prior to the hearing.

NOTE: Enclosed with this Order are several admonitions. These admonitions should be reviewed.

To The Clerk:

Enter upon the Journal of the Court on April 15, 2004 per order of the Court.

By: 
Presiding Judge

(Copy sent to counsel)

EXHIBIT

3

COURT OF APPEALS, FIRST APPELLATE
DISTRICT, HAMILTON COUNTY, OHIO

Per Rule 11B Appellate Procedure you are hereby notified that the record

has been filed this 3rd day of June 2004

in case number C 030948 (excluding transcript of proceedings)

B-9702196

State

-vs-

Merriweather

Gregory Hartmann
Clerk of Courts

By B.M. Deputy

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



STATE OF OHIO

APPEAL NO. C-030948

Appellee,

vs.

ENTRY STRIKING BRIEF AND
EXTENDING TIME TO FILE
AMENDED BRIEF UNTIL 6/16/04

LOUIS MERRIWEATHER

Appellant,

This cause came on to be considered upon the brief of the appellant filed herein on
5/26/04, and

The Court upon consideration thereof *sua sponte* strikes said brief for the reason that it
does not contain a final order. See Local Rule 6(B)(1)(b).

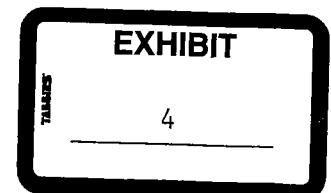
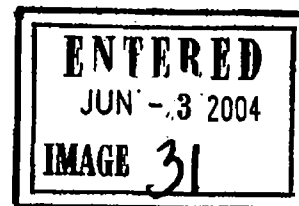
Wherefore, upon consideration thereof the appellant shall have until to file an amended
brief in conformance with the rules of this Court.

To The Clerk:

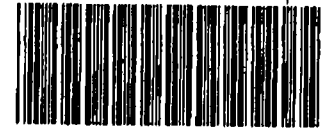
Enter upon the Journal of the Court on 6/3/04 per order of the Court.

By: Ralph Winkler (Copies sent to all counsel)
Presiding Judge

genentyl.doc



IN THE OHIO STATE COURT OF APPEALS
FOR HAMILTON COUNTY, OHIO
FIRST APPELLATE DISTRICT OF OHIO



D59906183

CASE NO.C-030948

STATE OF OHIO

Plaintiff-Appellee

vs.

LOUIS MERRIWEATHER

Defendant-Appellant

APPEAL FROM THEE DECISION OF
COMMON PLEAS COURT OF HAMILTON COUNTY
CRIMINAL DIVISON

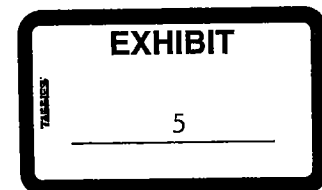
REVISED BRIEF OF APPELLANT LOUIS MERRIWEATHER

LOUIS MERRIWEATHER, #348-451
CHILLICOTHE CORRECTIONAL INSTITUTION
P.O.BOX 5500
CHILLICOTHE, OHIO 45601-0990
Defendant-Appellant In Pro-Se

FILED

2004 JUL 16 P 3:32

GREGORY HARTMANN
CLERK OF COURTS
HAM. CNTY. OH



FILED
COURT OF APPEALS

JUL 16 2004

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

TABLE OF CONTENTS
AND
ASSIGNMENT OF ERRORS

STATEMENT OF THE CASE	PAGE
a)Procedural Posture.....	
b)Statement of Facts.....	
FIRST ASSIGNMENT OF ERROR(S).....	1
(A) Presentence Investigative Report.....	1
(B)Psychiatric Evaluation Report.....	2
<p>Trial counsel was ineffectived when he allowed trial court to sentence defendant without presentence investigative report and psychiatric evaluation report.</p>	
ISSUE(S) PRESENTED FOR REVIEW.....	3
<p>(1) When defense counsel's [Prommise(s)]to Appellant are broken,[Appellant's guilty pleas],which were based upon defense counsel's promise(s),were "not" voluntarily, willingly, knowingly and freely.</p>	
<p>(2)When defense counsel failed to protect his promise(s),and to defend court ordered clinical evaluation,and PSI,defense counsel denied Appellant fundmental fairness at trial court proceeding,and denied Appellant due process protection,and rendered defense counsel's assistance ineffectived.</p>	
AUTHORITIES	
State v.Dietz,89 O.App.3d.69,623 N.E.2d.613.....	1
U.S.v.Barrett,890 F.2d.855(6th.Cir.1989).....	1
U.S. v.Stevens,851 F.2d.140-143(6th.Cir.1988).....	1
U.S. v.Silverman,976 F.2d.1502(6th.Cir.1992).....	1
U.S. v.Herrera,928 F.2d.769(6th.Cir.1991).....	1
Alabama v.Smith,490 U.S.794,109 S.Ct.2201;104 L.Ed.2d.865(1989).....	1
Robert,455 U.S.at 556,100 S.Ct.1362.....	1
U.S.v.Evans,891 F.2d.686-688(8th.Cir.1989),cert.denied,848,U.S.1074,108 S.Ct.1047, ,98 L.Ed.1010(1988),cert.,denied,495 U.S.932,110 S.Ct.2170,109 L.Ed.499(1990)..	1

R.C. §2947.25(A).....	2
State v. Lee, 56 O.App.2d.57, 10 003d.64, 383 N.E.2d.342.....	2
Johnson v. Zerbst, 304 U.S.458, 468, 58 S.Ct.1019, 1025, 82 L.Ed.1461(1938).....	2
Brady v. U.S. 742, 758, 90 S.Ct.1463, 1474, 25 L.Ed.2d.747(1970).....	2
Godinez v. Moran, 113 S.Ct.at 2694.....	2
Drope, (1975), 420 U.S.at 176, 95 S.Ct.at 906.....	3
Jackson v. Indiana, 406 U.S.715, 739, 92 S.Ct.1845, 1858; 32 L.Ed.435(1972).....	3
Riggins, 504 U.S.at 142, 112 S.Ct.at 1818-1819(1992).....	3
Strickland, (1984), 466 U.S.at 693-698; 104 S.Ct.2052.....	3
Combs v. Coyle, 205 F2d.369 (2002).....	3
Lockhart v. Fretwell, 506 U.S.364, 372, 113 S.Ct.838, 122 L.Ed.2d.180(1993).....	3

SECOND ASSIGNMENT OF ERROR.....3

Trial counsel was ineffectived, when he failed to protect defendant's appellate rights.

ISSUE PRESENTED FOR REVIEW.....5

When defense counsel failed to protect Appellant's appellate's rights, defense counsel's assistance was ineffectived and fell well below reasonably standards and denied Appellant "due process protect", under the 14th Amendment to the U.S. Constitution, and defense counsel's misconduct "adversely" affected Appellant's plea(s) and plea hearing outcome.

AUTHORITIES

Criminal Rule 11.....	4
State v. Buchanan, 43 O App.2d.93, 72 002 2d.307; 344 N.E.2d.503(1974).....	4
State v. Kelly, (1991), 57 Ohio St.3d.127, 129, 566 N.E.2d.658-600.....	4
Smith v. Robbins, 120 S.Ct.746, 772 (2002).....	4
Criminal Rule 32 (B)(2).....	5
R.C. §2953.05.....	5
Griffin v. Illinios, (1956), 351 U.S.12, 76 S.Ct.585, 100 L.Ed.891.....	5
Burns v. Ohio, (1959), 360 U.S.252, 79 S.Ct.1164, 3 L.Ed.2d.1209.....	5
Smith v. McMann, (1969), 417 F2d.648, 654, certiorani denied, 397 U.S.925, 90 S.Ct.929, 90 S.Ct.929, 25 L.Ed.105.....	5

LaChance v.Loudemill,470 U.S.532-542 (1985).....	5
Goodwin v.Cardwell,432 F2d.521,522-523(6th.Cir.1970).....	5
Lovelace v.Haskins,474 F2d.1254-1255,(1973).....	5
Swenson v.Boslen,(1967),386 U.S.258,at 260;87 S.Ct.at 997,18 L.Ed.2d.33.....	5

THIRD ASSIGNMENT OF ERROR.....6

Trial counsel was ineffective at sentencing by allowing trial court to impose maximum sentence without complying with sentencing guidelines.

ISSUE PRESENTED FOR REVIEW.....6

Defense counsel was ineffective in allowing trial court to impose maximum sentence without complying with sentencing guidelines,his assistance was not reasonably,and his ineffectiveness"adversely"affected Appellant's sentenc,and denied Appellant"due process protect".

AUTHORITIES

O.R.C. Section(s) §2929.11 through §2929.12(C),§2929.19(B)(2)(e) and §2929.14(C), with§2951.02(B).....	6
State v.Kershaw,132,Ohio App.3d.243(Hamilton Cty.1991),724 N.E.2d.1176.....	6
State v.Sheppard,(Hamilton,Cty.1997),124 Ohio App.3d.66;705 N.E.2d.411.....	6
State v.Comer,99 Ohio St.3d.463,793 N.E.2d.473.....	6
R.C. §2853.08 (A)(a).....	6

FOURTH ASSIGNMENT OF ERROR.....6

Trial counsel was ineffectived for allowing defendant to be classified a sexual predator without requisite hearing.

ISSUE PRESENTED FOR REVIEW.....7

Defense counsel was ineffectived in failing to object,when trial court failed to provide Appellant with a hearing under sexual predator guidelines,defense counsel's assistance was"not"within the bounds of reasonably,and"did not protect"Appellant's due process rights under R.C.§2950.09

AUTHORITIES

R.C. §2950.09(B)(1).....	7
State v.Eppinger,91 Ohio St.3d.158;743 N.E.2d.881(2000).....	7
State v.Cook,(1998),83 Ohio St.423-426.....	7

FIFTH ASSIGNMENT OF ERROR.....7

Trial court abused its' discretion in sentencing by not formally advising defendant of his appellate rights.

ISSUE PRESENTED FOR REVIEW.....8

Trial court abused its' discretion by not orally, directly formally advising Appellant of his appellate rights, trial court's abuse denied Appellant due process protection, and this abuse denied Appellant a fair and impartial trial court proceeding, and a right to direct appeal.

AUTHORITIES

Criminal Rule 32(B)(2), [Passim].....	5&7
State v. Sims, 272 N.E.2d. at 88-89 (Ohio 1971).....	7
Evitts v. Lucey, 469 U.S. 387, 393 (1985).....	7
Douglas v. California, 372 U.S. 353m356-57 (1963).....	7
Griffin v. Illinois, [Passim].....	5&8
Burkett v. Cunningham, 826 F2d. 1208, 1221 (8th. Cir. 1987).....	8
Stephenson, 501 F.Supp. 840, 842 (M.D.N.C. 1981).....	8

SIXTH ASSIGNMENT OF ERROR.....8

Trial court abused its' discretion by not formally advising defendant of a hearing as provided by R.C. §2950.09 (B)(1).

ISSUE PRESENTED FOR REVIEW.....9

Trial court abused its' discretion and denied Appellant due process protection, by not formally providing Appellant a sexual predator hearing, with clear and convincing evidence before adjudicating Appellant a sexual predator.

AUTHORITIES

R.C. §2950.09 (B)(1), [Paasim].....	7&8
State v. Eppinger, [Passim].....	7&8
R.C. §2050.01 (F).....	8
State v. Cook, [Passim].....	7&8

State v. Gowdy, (2000), 88 Ohio St.3d.387,389,727 N.E.2d.579-589.....	8
Britt v. North Carolina, (1971), 404 U.S.226,227,92 S.Ct.431-433;30 L.Ed.400-403.8	
Conclusion.....	9-10
Certificate of Service.....	10

PRIOR SUBMITTED EXHIBITS

IMAGE-241[Ordering probation investigation report]

IMAGE-19 [May 16,1997]appointing CDTC for clinical examination]

IMAGE-130 [entry waiver trial by jury

IMAGE-124 [withdrawing guilty pleas May 15,1991

IMAGE-124-A [the 4"is"altered,May 15,1997

IMAGE-225[judgment entry,June 18,1997,Crim.Rule 32(A)(2) was not applicable at plea hearing in 1997.

IMAGE-135,[April,26,1997,entry granting motion to dismiss defendant's request for transcripts.

T.P.(1),March 21,2001,Request for view of presentencing investigation report to Hamilton County Probation Department.

T.P.(2),ORINGIAL,respond from Hamilton County Prosecuting Office for request to view presentence report.

T.P.(3),ORINGIAL,motion to dismiss request for transcripts,April 10,2001.

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO

Plaintiff-Appellee

No.C-030948

-VS-

LOUIS MERRIWEATHER

Defendant-Appellant

REVISED BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF THE CASE

a) Procedural Posture

Defendant-Appellant, Louis Merriweather, was named in a four (4) count indictment returned by a Hamilton County Grand Jury, in April of 1997, alleging Appellant forced a minor girl child into sexual conduct [cunninlingus], in violation of R.C. §2907.02(A)(1). In less than 45 days from indictment, Appellant's defense counsel induced/coerced Appellant into pleading guilty to two (2) counts of the indictment on [promise(s)] from defense counsel, a maximum sentence of 10 years on each count, to run current to each other was imposed upon Appellant for his pleas, with sexual predator specifications to each count.

From the judgment of the trial court, Appellant Merriweather now appeals to this court.

STATEMENT OF THE FACTS

b) This is a classic case of she said, she heard. The state based its' arrest and charges on Kisha Parrish and Erica Parrish Black (Kisha is Erica's Aunt), who in the past

charged Appellant with raping her (kisha) on two difference alleged occasions in two (2) difference states. What the alleged victim does not tell the court and allow it to reflect in their charges is that on the morning of March 23, 1997, and two days prior to the alleged offends, Kisha and the Appellant had voluntarily engaged in drugs and aclohol, including sexual acts of oral and intercourse personally with each other, at 1535 Pleasant St. in the county of Hamilton and the city of Cincinnati, prior to Kisha calling the police on the morning in question, and personally orally telling police that Kisha was a living resident of 1535 Pleasant St. There is "no" dispute that the minor child Erica was raped, [it is common knowledge with-in the immediate Black and Parrish family members], that Erica was raped months prior too the alleged complaints against Appellant, but, "not by Appellant".

FIRST ASSIGNMENT OF ERROR

TRIAL COUNSEL WAS INEFFECTIVE, WHEN HE ALLOWED TRIAL COURT TO SENTENCE APPELLANT WITH-OUT PRESENTENCE INVESTIGATIVE REPORT [PSI] AND PSYCHIATRIC EVALUAION [PE].

ARGUMENT [S]

Trial court documentations affirms that defendant [alleged] induced pleas too 2 counts of violation of R.C. § 2907.02(A)(1), on the promise(s) from defense counsel, promise(s) of presentence investigative report, [PSI] and psychiatric evaluation [PE]. (T.p. page 11, lines 10-15. However the PSI did not materialize, if one infact had, defendant was "not" permitted to personally review PSI in a reasonable time before sentencing to correct any misinformation, the PSI was court ordered, (T.p. page 11, lines 10-13). Defendant was entitled to access to PSI report in a reasonable time before sentencing. State v. Dietz, 89 O.App.3d 69, 623 N.E.2d 613, to correct any material misinformation. U.S. Barrett, 890 F.2d 855 (6th Cir. 1989). The extent of a defendant's constitutional right is not "to be sentenced on the basis of invalid information". U.S. v. Stevens, 851 F.2d 140-143 (6th Cir. 1988); U.S. v. Silverman, 976 F.2d 1502 (6th Cir. 1992). [A]ny information may be considered so long as it had "[sufficient indicia of reliability to support its accuracy]". U.S. v. Herrera, 928 F.2d 769 (6th Cir. 1991); Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989). Sentence imposed on the basis of material misinformation under some circumstances, however, may violate due process. Robert, 455 U.S. at 556, 100 S.Ct. 1362; U.S. v. Evans, 891 F.2d 686-688 (8th Cir. 1989), cert. denied, 848 U.S. 1074, 108 S.Ct. 1047, 98 L.Ed.2d 1010 (1988), cert., denied, 495 U.S. 931, 110 S.Ct. 2170, 109 L.Ed.2d 499 (1990). See also T.p. Image 241.

On the same day of May 15, 1997, in open court, the promise of psychiatric evaluation was made to defendant for defendant's induced pleas by defense counsel. [T.p. page 11, lines 10-15; T.p. page 13, lines 2-25; T.p. page 14, lines 1-25; T.p. page 15, lines 1-25; T.p. page 16, lines 1-5]. Defense counsel also gave trial court misinformation on defendant's suicide watch, T.p. page 13, lines 20-25; T.p. page 14, lines 1-7], and on the administration simultaneously of several different anti-psychotropic medication which had an adverse effect on defendant's mental state 'his will too knowingly enter into guilty plea agreement. [T.p. page 13, lines 1-25; T.p. page 14, lines 1-5]. This court ordered PE would have put to rest whether defendant was infact mentally competent to enter a guilty plea. Defense counsel promise was broken, [there was "no" court ordered PE as defense counsel promised], and defense counsel was ineffectived. [T.p. page 16, lines 11-22; T.p. Image 19]. Defense counsel's promise to defendant was "not" in good faith, and his ineffectiveness was prejudicial toward defendant and a serious breach of trust between defense counsel and defendant. The presentence PE mandated by [former R.C. §2947.25(A)], is part of the sentencing process and "cannot" be waived by the defendant or his counsel. [A]ny sentence imposed with-out compliance with former R.C. §2947.25(A), is void. State v. Lee, 56 O.App.2d.57, 10 003d.64, 383 N.E.2d.342. Defense counsel should have maded reasonable investigation to assure that clincial examination was performed as defense counsel promised. "[A] criminal defendant may not waive his constiutional rights, his right to counsel or plead guilty unless he does so "competenly" and "intelligently". Johnson v. Zerbst, 304 U.S.458, 468, 58 S.Ct.1019, 1025, 82 L.Ed.1461 (1938). Brady v. U.S., 397 U.S.742, 758, 90 S.Ct.1463, 1474, 25 L.Ed.2d.747 (1970). Godinez v. Moran, 113 S.Ct. at 2694.

Drope, 420 U.S. at 176, 95 S.Ct. at 906. See also Jackson v. Indiana, 406 U.S. 715, 739, 92 S.Ct. 1845, 1858, 32 L.Ed.2d 435 (1972); Riggins, 504 U.S. at 142, 112 S.Ct. at 1818-1819 (1992). In order to show prejudice, defendant need only show that there is a reasonable probability that, but for counsel's errors, the fact finder would have had a reasonable doubt about defendant's guilt. Strickland, 466 U.S. at 693-698, 104 S.Ct. 2052. Combs v. Coyle, 205 F.2d 369 (6th Cir. 2002); Lockhart v. Fretwell, 506 U.S. 364, 372, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993).

ISSUE(S) PRESENTED FOR REVIEW

(1) WHEN DEFENSE COUNSEL'S PROMISE(S) TO APPELLANT ARE BROKEN, [APPELLANT'S GUILTY PLEAS], WHICH WERE BASED UPON DEFENSE COUNSEL'S PROMISE(S), WERE "NOT" VOLUNTARILY, WILLINGLY, KNOWINGLY AND FREELY.

(2) WHEN DEFENSE COUNSEL FAILED TO PROTECT HIS PROMISE(S), AND TO DEFEND COURT ORDERED CLINICAL EVALUATION, AND PSI, DEFENSE COUNSEL DENIED APPELLANT FUNDAMENTAL FAIRNESS AT TRIAL COURT PROCEEDING, AND DENIED APPELLANT DUE PROCESS PROTECTION, AND RENDERED DEFENSE COUNSEL'S ASSISTANCE INEFFECTIVE.

SECOND ASSIGNMENT OF ERROR

Trial counsel was ineffective, when he failed to protect defendant's appellate rights.

ARGUMENT

At plea hearing of May 15, 1997, in open court the guilty plea agreement(s) were presented to defendant, defendant affirms his signature. [T.p. page 7, lines 14-21], however defendant's personal

signature"does not"appear on,T.p.Image 124,defendant's signature appears on T.p.page Image 124A;[T.p.page 8,lines 19-25;T.p.page 9, lines 1-25;T.p.page 10,lines 1-17]. The court transcript of May 15,1997,is"silent"as too trial court or defense counsel orally,directly adhereing to criminiial rule 11;**Criminal Rule 11**,is concern with a defendant's rights upon entering a plea and also sets forth the procedure to be followed when such plea is taken.Criminal Rule 11,includes all of the defendant's constitutional rights as stated in the fifth and sixth amendments of the U.S.Constitution.In order for a plea of guilty to be valid in a felony case"all"of the the procedural requirements of Criminal R.11,"must" be scrupulously adhere too,otherwise,the guilty plea is void.State v.Buchanan.43 O. App.2d.93,72 002 2d.307,344 N.E.2d.503,(1974).It was defense couns-el's responsibility to assure that defendant was appraised of"all" his appellate rights and that trial court strictly complied with criminal rule 11. In reviewing the records on appeal,the appellate court should inquire as to whether the defendant voluntarily and knowingly waived his constitutional right(s).This inquiry intails a review of the records to ensure that criminal rule 11,was followed by the trial court upon defendant's guilty plea.State v.Kelly,57 Ohio St.3d.127,129,566 N.E.2d.658,660.Smith v.Robbins,120 S.Ct.746,772 (2000). In adsence of sentencing transcript of June 18,1997,Appellant maintains that defense counsel nor trial court in a personal oral manner informed Appellant of his appellate rights,pursuant to

Criminal Rule 11(b)(2), before, after or during sentencing. Defense counsel "did not" make a reasonable effort to protect Appellant's appellate rights either orally, directly and personally during trial court proceeding. [R]ight to appeal from conviction in state court is "not" an absolute right, but where opportunity to appeal is granted, as in Ohio, an indigent conviction defendant "cannot" be deprived of his opportunity to appeal by his impecunious condition, R.C. §2953.05, *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891, *Burns v. Ohio*, 360 U.S. 252, 79 S.Ct. 1164, 3 L.Ed. 2d. 1209, *Smith v. Mann*, 391 U.S. 491, 88 S.Ct. 1399, 20 L.Ed. 2d. 105. The Federal Constitution is violated if a convicted defendant is denied an appeal "by reason of his lack of knowledge of his right and the failure of his counsel or the court to advise him of his right to appeal, with the aid of counsel". *LaChance v. Erickson*, 522 U.S. 262, 266 (1998), *City of Cleveland Board of Education v. Loudemill*, 470 U.S. 532-542 (1985); *Goodwin v. Cardwell*, 432 F.2d 521, 522-523 (6th Cir. 1970). [T]he indigent defendant need only "show" that he "was not" informed of his right to direct appeal. *Lovelace v. Haskins*, 474 F.2d 1254-1255 (1973); [T.p. page 8, lines 13-25; T.p. page 9, lines 1-25; T.p. page 10, lines 1-20; T.p. page 16, lines 7-22] Over several years Appellant has attempted to get sentencing transcript of June 18, 1997; See also T.P. Image 135; T.p. 1; T.p. 2; T.p. 3. [T]he right to appeal exists even in the absence of a request. *Swenson v. Boslen*, 386 U.S. 258, at 260, 87 S.Ct. at 997, 18 L.Ed. 2d. 33.

ISSUE PRESENTED FOR REVIEW

WHEN DEFENSE COUNSEL FAILED TO PROTECT APPELLANT'S APPELLATE RIGHTS, DEFENSE COUNSEL'S ASSISTANCE WAS INEFFECTIVE AND FELL WELL BELOW REASONABLE STANDARDS, AND DENIED APPELLANT DUE PROCESS PROTECTION UNDER THE 14TH AMENDMENT TO THE U.S. CONSTITUTION AND DEFENSE COUNSEL'S MISCONDUCT ADVERSELY AFFECTED APPELLANT'S PLEA HEARING OUTCOME.

THIRD ASSIGNMENT OF ERROR

TRIAL COUNSEL WAS INEFFECTIVED AT SENTENCING, BY ALLOWING TRIAL COURT TO IMPOSE MAXIMUM SENTENCING WITH-OUT STRICTLY COMPLYING WITH SENTENCING GUIDELINES.

ARGUMENT

Defense counsel knowingly allowed trial court to impose maximum sentence on defendant with-out complying with sentencing guidelines. [Ohio] Courts as of 1996, are required to comply with the sentencing guidelines and procedures set forth under Ohio's Revised Codes §2929.11 through §2929.14(C) and R.C.'s §2951.02(B); §2929.12(C) with §2929.19(B)(2)(e), with trial court making and "especially enumerating" why this particular alleged offense were the "**worst forms**" of the offense and deserving maximum sentence. State v. Kershaw, 132 Ohio App.3d.243 (Hamilton Cty.1991), 724 N.E.2d.1176; State v. Sheppard, (Hamilton, Cty.1997), 124 Ohio App.3d.66;705 N.E.2d.411; State v. Comer, 99 Ohio St.3d.463, 793 N.E.2d.473. Defendant who received maximum sentence for offense "is entitled" to **de novo** review of sentence by court of appeals. R.C. §2953.08(A)(a).

ISSUE PRESENTED FOR REVIEW

DEFENSE COUNSEL WAS INEFFECTIVED IN ALLOWING TRIAL COURT TO IMPOSE MAXIMUM SENTENCE WITH-OUT COMPLYING WITH SENTENCING GUIDELINES, HIS ASSISTANCE WAS "NOT" REASONABLY, AND COUNSEL'S INEFFECTIVENESS ADVERSLY AFFECTED APPELLANT'S SENTENCE, AND DENIED APPELLANT DUE PROCESS PROTECTION.

FOURTH ASSIGNMENT OF ERROR

TRIAL COUNSEL WAS INEFFECTIVED FOR ALLOWING DEFENDANT TO BE CLASSIFIED AS A SEXUAL PREDATOR WITH-OUT REQUISITE HEARING.

ARGUMENT

Defense counsel was ineffectived at plea hearing and sentencing of May 15, 1997 and June 18, 1997, when he (counsel) knowingly allowed trial court to classify defendant

a sexual predator with-out requisite hearing.[T.p.page 7,lines 1-12;T.p.page 7,lines 23-25;T.p.page 8 lines 1-14;T.p.page 10,lines 21-25;T.p.page 11,lines 1-4;T.p.page 17,lines 16-25]. Defendant was adjudicated with-out clear and convincing evidence and in absence of R.C.§2950.09(B)(1).State v.Eppinger,91 Ohio St.3d.158;743 N.E.2d.881 (2000);State v.Cook,(1998),83 Ohio St.3d.423-426.

ISSUE PRESENTED FOR REVIEW

DEFENSE COUNSEL WAS INEFFECTIVED IN FAILING TO OBJECT,WHEN TRIAL COURT FAILED TO PROVIDE APPELLANT WITH A HEARING UNDER SEXUAL PREDATOR GUIDELINES,DEFENSE COUNSEL'S ASSISTANCE WAS NOT WITHIN THE BOUNDS OF REASONABLY,AND "DID NOT"PROTECT APPELLANT'S DUE PROCESS RIGHTS UNDER R.C.§2950.09.

FIFTH ASSIGMENT OF ERROR

TRIAL COURT ABUSED ITS' DISCRETION IN SENTENCING BY NOT FORMALLY ADVISING DEFENDANT OF HIS APPELLANT RIGHTS.

ARGUMENT

Trial court abused its' discretion by not orally directly and personally informing defendant of his appellate rights during sentencing in absence of Criminal Rule 32(B)(2).Trial court transcript of May 15,1997 is silent.Trial court "did not" in an oral dialogue inform defendant of his appellate rights,which should have been personal and in a reasonably intelligible manner."[I]f one's right to direct appeal and his right to court-appointed counsel for such appeal are to be viable,it is imperative that there be such a determination of such rights by the appellate court".State v.Sims,272 N.E.2d.at 88-89(Ohio 1971);Evitts v.Lucey,469 U.S.387,393(1985);Douglas v.California,372 U.S.353,356-57(1963). The purpose of the first appeal provided as of right by a state is to determine whether the individual defendant has been "lawfully" incarcerated and to ensure a correct adjudication of guilt or innocence.

Griffin v. Illinois, 351 U.S. 12, 18 (1956). Burkett v. Cunningham, 826 F.2d 1208, 1221 (8th Cir. 1987); Stephenson, 510 F. Supp. 840, 842 (M.D.N.C. 1981). Equal protection concerns are implicated when the state treats a class of defendants differently for purpose of offering them a meaningful appeals. Evitts, 469 U.S. at 405.

ISSUE PRESENTED FOR REVIEW

TRIAL COURT ABUSED ITS' DISCRETION BY NOT ORALLY, DIRECTLY FORMALLY ADVISING APPELLANT OF HIS APPELLATE RIGHTS, TRIAL COURT'S ABUSE DENIED APPELLANT DUE PROCESS PROTECTION, AND THIS ABUSE DENIED APPELLANT A FAIR AND IMPARTIAL TRIAL COURT PROCEEDING, AND A RIGHT TO DIRECT APPEAL.

SIXTH ASSIGNMENT OF ERROR

TRIAL COURT ABUSED ITS' DISCRETION BY NOT FORMALLY ADVISING DEFENDANT OF A HEARING AS PROVIDED BY R.C. § 2950.09(B)(1).

ARGUMENT

Trial court abused its' discretion by adjudicating defendant a sexual predator, in absence of R.C. § 2950.09(B)(1), and with evidence which was "not" clear and convincing. State v. Eppinger, 91 Ohio St. 3d 158, 743 N.E.2d 881. "To [earn] the most severe designation of sexual predator, the defendant "must" have been convicted of or pleaded guilty to committing a sexually oriented offense and "must" be likely to engage in the future in one or more sexually oriented offenses". R.C. § 2050.01(F), State v. Cook, 83 Ohio St. 3d at 407, 700 N.E.2d at 574. A sexual offender classification will have a profound impact on a defendant's life, it must be impartial and fair. State v. Gowdy, (2000), 88 Ohio St. 3d 387, 389, 727 N.E.2d 579-589. The state "must", as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense when those tools are available for a price to other prisoners". Britt v. North Carolina, (1971), 404 U.S. 226, 227; 92 S.Ct. 431, 433; 30 L.Ed.2d 400, 403.

ISSUE PRESENTED FOR REVIEW

TRIAL COURT ABUSED ITS' DISCRETION AND DENIED APPELLANT DUE PROCESS PROTECTION, BY NOT FORMALLY PROVIDING APPELLANT A SEXUAL PREDATOR HEARING, WITH CLEAR AND CONVINCING EVIDENCE BEFORE ADJUDICATING APPELLANT A SEXUAL PREDATOR.

T.p.page 5,lines 11-25;T.p.page 6,lines 1-25;T.p.page 7,lines 1-12;T.p.page 7,lines 23-25;T.p.page 8,lines 1-14;T.p.page 17,lines 16-25].

C O N C L U S I O N

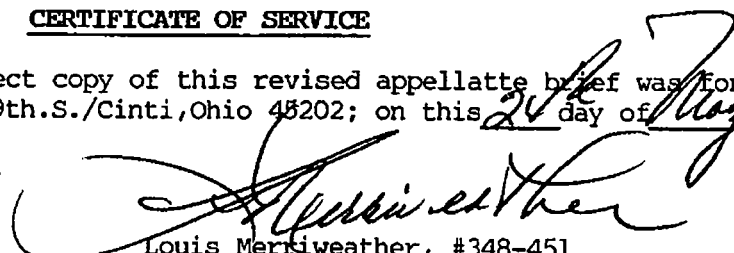
The Sixth and Fourteenth Amendments guarantee a person accused of a crime the right to the aid of a lawyer in preparing and presenting his defense, the right to counsel is the right to effective assistance of counsel with adequate legal assistance. In Strickland v. Washington, [passim] at 2074-2075, Justice Marshall dissented and filed this opinion in part "to tell lawyers and the lower courts that counsel for a criminal defendant "must" behave "reasonably" and must act like "a reasonable competent attorney", ante, at 2065, "is to tell them nothing". It is an unfortunate but undeniable fact that a person of means, by selecting a lawyer and paying him enough to ensure he prepares thoroughly, usually can obtain better representation than that available to an indigent defendant, who must rely on appointed counsel, who in turn, has limited time and resources to devote to a given case. [I]s a reasonably competent attorney, a reasonably competent adequately paid retained attorney or a reasonably competent appointed attorney? It is also a fact that the quality of representation available to ordinary defendants in different parts of the country varies significantly. Should the standard of performance mandated by the Sixth Amendment vary by local"? [A]ppellant maintains that in absence of proper procedure and in strict violation of Ohio's and the U.S. Constitutions, Appellant was sold into "involuntary servitude/slavery" to the state of Ohio for 10 years for the tune of \$300.00 dollars.

In 1865, the thirteenth Amendment was adopted which, ["prohibits slavery and involuntary servitude], the Fourteenth Amendment "extended the privileges of citizenship to 'African Americans'" and forbids the states from "abridging" the privileges or immunities of citizens of the United States, it also forbids the states from depriving any person of life, liberty, or property without "due process of law", or of denying any person the equal protection of the law. In the instance case at bar "three" [3] laws are in conflict, the laws of Hamilton County, the Ohio and the U.S. Constitution, Hamilton County's laws have illegally kept Appellant in involuntary servitude to the state of Ohio against Appellant's will and deliberately denied Appellant due process protection. For 7 1/2 years Appellant has been imprisoned under inhuman conditions, with undue mental and physical pressure imposed against him, without the benefit of due process protection and still with the strong belief in the American justice system which has thus far failed him". Appellant has been deliberately denied the personal privileges of his loved ones', his family "structure" has been broken, his family members have suffered the personal humiliation with mental and physical pain from Appellant's wrongful incarceration. Delayed justice must not continue to incarcerate Appellant without due process of law.

It is therefore prayed that delayed justice be granted Appellant.

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of this revised appellate brief was forward to Michael K. Allen, at 230 E. 9th. S./Cinti, Ohio 45202; on this 20th day of May 2004 by per-paid first class mail.


Louis Merriweather, #348-451
P.O. Box 5500
Chillicothe, Ohio 45601-0990

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff

vs.

LOUIS MERRIWEATHER,

Defendant.

Case No. B9702196

Judge Beth A. Myers

ENTRY DENYING MOTION

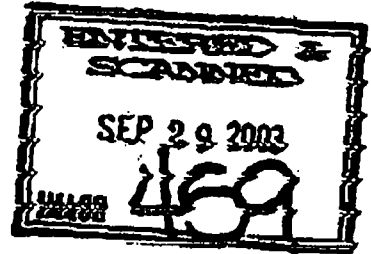
Upon consideration of Defendant's Motion, the Court hereby denies Defendant's Motion and his request for evidentiary hearing. Pursuant to § 2953.31 and 2953.23 of the Ohio Revised Code, Defendant's Motion was not timely filed. Further, the Court finds that no grounds exist for the relief requested.

Beth A. Myers
Judge Beth A. Myers

ENTER

SEP 29 2003

BETH A. MYERS, JUDGE



Schedules**Document Listing**

APPEARANCE DOCKET

C 0300948

Attorney - Plaintiff PRO SE Z9997
 Attorney - Defendant HAMILTON COUNTY PROSECUTOR Z9990
 Judge -

STATE OF OHIO vs. LOUIS MERRIWEATHER

Filed: 12/29/2003 A117 - MOTION TO FILE DELAYED APPEAL - POVERTY AFFIDAVIT

Total Deposits \$0.00 Total Costs \$89.00

LOUIS MERRIWEATHER #348-451

Appellant(s)

vs.

STATE OF OHIO

Appellee(s)

IMAGE	DATE	DESCRIPTION	AMOUNT
<u>10c</u>	12/26/2003	NOTICE OF APPEAL FILED.	
	12/26/2003	NOTICE OF APPEAL FILED AND MOTION FOR DELAYED APPEAL NO. C030948 COPY SENT TO HAMILTON COUNTY PROSECUTOR	
<u>10c</u>	12/26/2003	AFFIDAVIT	
<u>10c</u>	12/26/2003	MOTION TO APPOINT COUNSEL	
	12/29/2003	MOTION TO FILE DELAYED APPEAL	
	12/29/2003	NO DEPOSIT REQUIRED-POV.AFF. LOUIS MERRIWEATHER	0.00
	12/29/2003	COMMON PLEAS TRIAL COURT # B-9702196	
<u>16</u>	2/6/2004	ENTRY GRANTING LEAVE TO APPEAL AND EXTENDING TIME	
<u>10c</u>	2/10/2004	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
<u>8</u>	3/5/2004	ORDER TO SHOW CAUSE	
<u>10c</u>	3/10/2004	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
<u>10c</u>	3/12/2004	CERTIFICATE OF SERVICE	
<u>10c</u>	4/2/2004	BRIEF OF APPELLANT LOUIS MERRIWEATHER	
<u>10c</u>	4/2/2004	DOCKET STATEMENT FILED. B-9702196	
<u>4</u>	4/15/2004	ACCELERATED CALENDAR SCHEDULING ORDER, ENTERED. 06/09/04 RECORD DUE. 07/09/04 APPELLANT'S BRIEF DUE. 08/10/04 APPELLEE'S BRIEF DUE.	
<u>10c</u>	4/16/2004	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	

EXHIBIT

6

4/21/2004 MOTION FOR EXTENSION OF ACCELERATED BRIEF
 BEYOND THE 15 PAGE LIMIT TO 30 PAGES

 5/14/2004 ENTRY OVERRULING MOTION TO ENLARGE PAGE
 LIMITS FOR APPELLANT'S BRIEF

 5/19/2004 NOTICE OF ORDER OR JUDGMENT SENT BY
 ORDINARY MAIL TO ALL PARTIES REQUIRED BY
 LAW.

 5/26/2004 REVISED BRIEF OF APPELLANT LOUIS
 MERRIWEATHER

 6/3/2004 TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES
 FILED

 6/3/2004 NOTICE OF FILING OF RECORD EXCLUDING
 TRANSCRIPT OF PROCEEDINGS MAILED TO MICHAEL
 K. ALLEN AND LOUIS MERRIWEATHER

 6/3/2004 ENTRY STRIKING AND EXTENDING TIME TO FILE
 AMENDED BRIEF UNTIL 6/16/04

 6/7/2004 NOTICE OF ORDER OR JUDGMENT SENT BY
 ORDINARY MAIL TO ALL PARTIES REQUIRED BY
 LAW.

 6/21/2004 REQUESTED FILING OF FINAL ORDER PER LOCAL
 RULE 6 (B) (1) (B) CASE NO. C-030948

 7/6/2004 LETTER FROM LOUIS MERRIWEATHER

 7/12/2004 APPELLANT'S REQUEST FOR ORAL ARGUMENT

 7/16/2004 REVISED BRIEF OF APPELLANT LOUIS
 MERRIWEATHER

 7/16/2004 MOTION TO EXTEND TIME

 7/22/2004 ENTRY EXTENDING TIME TO FILE APPELLANT'S
 BRIEF AND ACCEPTING BREIF AS TIMELY FILED

 7/27/2004 NOTICE OF ORDER OR JUDGMENT SENT BY
 ORDINARY MAIL TO ALL PARTIES REQUIRED BY
 LAW.

 8/2/2004 TRANSCRIPT OF PROCEEDINGS B-9702196 1 VOL.